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|-------------------------------|------------------------------------|---------------------|--|
| <b>Notice of Allowability</b> | <b>Application No.</b>             | <b>Applicant(s)</b> |  |
|                               | 10/762,406                         | UNZICKER ET AL.     |  |
|                               | Examiner<br>Christopher J. Novosad | Art Unit<br>3671    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to the amendment filed on March 28, 2005.
2.  The allowed claim(s) is/are 19, 21 and 22.
3.  The drawings filed on 22 January 2004 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
 of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_.
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicants, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In the specification:

In the preliminary amendment to the specification dated January 22, 2004, --now U.S. Patent No. 6,725,579,-- has been inserted after "Apparatus," in line 3.

In the claims:

This application is in condition for allowance except for the presence of claims 5-18 to an invention non-elected without traverse. Accordingly, claims 5-18 have been cancelled.

### **REASONS FOR ALLOWANCE**

The following is an examiner's statement of reasons for allowance:

The prior art of record fails to show or suggest an excavating apparatus wherein the boom further includes a *tilt axis* allowing the head shaft to pivot along the tilt axis *which is fixed substantially perpendicular with respect to the pivot axis* as specifically called for in the claimed combination in claim 19.

The prior art of record also fails to show or suggest an excavating apparatus wherein the head shaft is also operatively pivotally attached to the excavation boom along a *tilt axis*; and

wherein the tilt axis *is fixed substantially perpendicular to the pivot axis* as specifically called for in the claimed combination in claim 21.

The prior art of record further fails to show or suggest an excavating apparatus wherein the tilt axis is *fixed* substantially parallel to a line substantially perpendicular to the pivot axis as specifically called for in the claimed combination in claim 22.

With respect to claims 19 and 21, it is to be noted that for two straight lines to be **perpendicular** to each other, they must **intersect** each other at a right angle (90 degree angle). The applied German (DE 198 58 151) reference fails to disclose or suggest that the “tilt axis...is fixed substantially perpendicular with respect to said pivot axis” as required in the allowed claims. While the “tilt axis” in the German ‘151 reference is shown to be transverse to the “pivot axis” it is not “fixed substantially perpendicular” thereto, i.e., it is not **fixed** with respect to the “pivot axis” such that it **intersects** the “pivot axis” at substantially a right angle.

With respect to claim 22, as the hydraulic cylinders are used to pivot members 14a, 14b, 14c, and 16, the orientation of tilt axis AK will change accordingly with respect to the pivot axis extending into the page of Fig. 1 of German reference '151. Therefore, the tilt axis is **not “fixed substantially parallel to a line substantially perpendicular to said pivot axis”** (emphasis added) as recited in the last two lines of claim 22 since as the hydraulic cylinders are used to pivot members 14a, 14b, 14c, and 16, the orientation of tilt axis AK will change accordingly with respect to the pivot axis extending into the page of Fig. 1 of German reference '151.

Any comments considered necessary by applicants must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad  
Primary Examiner  
Art Unit 3671

April 18, 2005